DOCUMENT RESUME

ED 339 673 SO 022 012

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TITLE Teaching the Law Using United States Supreme Court Cases. ERIC Digest.
INSTITUTION ERIC Clearinghouse for Social Studies/Social Science Education, Bloomington, IN.
SPONS AGENCY Office of Educational Research and Improvement (ED), Washington, DC.
REPORT NO EDO-SO-91-8
PUB DATE Sep 91
CONTRACT RI88062009
NOTE 4p.
PUB TYPE Guides - Classroom Use - Teaching Guides (For Teacher) (052) -- Information Analyses - ERIC Clearinghouse Products (071)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS *Citizenship Education; Civics; Constitutional History; *Constitutional Law; Court Role; Democratic Values; Educational Objectives; *Law Related Education; Laws; Secondary Education; Social Studies; *Teaching Methods; United States History
IDENTIFIERS ERIC Digests; *Supreme Court

ABSTRACT

Since 1789, the Supreme Court has been making decisions that affect all U.S. citizens. The study of Supreme Court cases, therefore, should be an integral part of civic education. This ERIC Digest discusses: (1) constitutional issues and Supreme Court cases that should be taught; and (2) effective strategies for teaching them. It also includes a list of national organizations that develop resources to enhance the teaching of Supreme Court cases. (Author)

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by
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ERIC DIGEST EDO-SO-91-8 September 1991

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"We are very quiet there, but it is the quiet of a storm centre." These words were used in 1913 by Associate Justice Oliver Wendell Holmes Jr. to describe the Supreme Court. Since 1789, the Court has been making decisions that affect all of us. The study of Supreme Court cases, therefore, should be an integral part of civic education. This ERIC Digest discusses (1) constitutional issues and Supreme Court cases that should be taught and (2) effective strategies for teaching them. It also includes a list of national organizations that develop resources to enhance the teaching of Supreme Court cases.

Selection of Constitutional Issues and Supreme Court Cases. When deciding which cases to include in the curriculum, a teacher must choose from hundreds of potential cases. The following criteria can guide decisions about which cases and issues should be included.

Select "landmark decisions" that constitutional scholars have, for the most part, agreed are the most important ones. For example, John A. Garraty's book *Quarrels That Have Shaped The Constitution* describes twenty landmark decisions from *Marbury v. Madison* (1803) to *Roe v. Wade* (1973). Duane Lockard and Walter F. Murphy's *Basic Cases in Constitutional Law* includes thirty-one landmark decisions. Publications like these should be used as guides to case selection.

Cases should be studied that involve issues in the lives of pre-adults. Students are more likely to be interested in cases that affect them directly. For example, in *Tinker v. Des Moines Independent School District* (1969), Justice Abe Fortas, writing the majority opinion in this case that declared that the wearing of black armbands to protest the Vietnam War was a form of "symbolic speech", argued that "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." However, in the 1980s, cases were decided that seemed to limit the rights of students while in a school setting. For example, in *New Jersey v. T.L.O.* (1985), the Supreme Court decided that school officials need only "reasonable suspicion" rather than "probable cause" to search a student's property. A few years later, in *Hazelwood School District v. Kuhlmeier* (1988), the Court held that public school officials may censor student speech which takes place in school sponsored forums. Justice Byron White, writing for the majority, argued that the school newspaper *Spectrum* is not a public forum and is sponsored by the school, therefore, school authorities may exercise editorial control over its contents.

Some cases chosen should emphasize the paradox of majority rule with respect for minority rights, two core concepts of constitutional democracy. The Supreme Court has acted as the "David" against the "Goliath" of an oppressive majority. For example, in *Texas v. Johnson* (1989), the Court agreed with the Texas Court of Appeals decision to reverse Johnson's conviction for publicly burning the American flag. Despite the possible influence of the majority of American citizens, who disagreed with Johnson, the Court, in a 5-4 decision, upheld the rights of an individual who expressed an emphatically unpopular position. In 1948, the Court, in its unanimous decision in *Shelley v. Kraemer*, put an end to racial covenants. One of the attorneys for the petitioner, Thurgood Marshall, argued that racial covenants, enforced by state courts, had denied to African American citizens rights that were enjoyed, as a matter of fact, by other citizens representing the majority. These decisions and others illustrate the paradoxical relationship of majority rule with respect for minority rights.

Effective Instructional Strategies for Teaching Supreme Court Cases. Using a variety of instructional strategies throughout the school year is the most effective way to teach Supreme Court cases. Some practical examples are presented below.

Teach Supreme Court cases in historical context so that the constitutional issue is cast within the social forces that generated it. For example, should student expression be limited in school settings? What types of actions violate the Establishment Clause of the Constitution? What constitutes cruel and unusual punishment? What kinds of searches and seizures violate the Fourth Amendment? Does the Second Amendment's right to bear arms include owning a machine gun? These issues and others should be examined in an historical perspective and in terms of present-day standards in recent court decisions. How have decisions and standards changed over time? By discussing the legal precedents to a modern decision, students can begin to understand both the continuity and the fluidity of the law, as well as the political and social times in which a case was decided.

When discussing Supreme Court cases, both the majority and dissenting opinions should be examined. Students need to understand that if judges can disagree about important issues, then citizens should feel confident to do the same.

Using a brief lecture along with discussion is an excellent method to introduce an issue and subsequently the case or cases for examination. However, use of the case study method is probably the most common and effective strategy for teaching Supreme Court issues and decisions. To be successful with this strategy, the teacher must be well informed on the legal issues and facts of the case. The approach is successful because of the active involvement of students in analyzing a legal case by participating in class discussions that identify a particular legal issue, taking sides, stating points of view, and formulating and evaluating decisions. When

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using the case study method, students are encouraged to carry out the following steps:

- Review the background information and the facts in the case.
- Determine the main issue in the case.
- Examine alternative arguments on the issue in the case.
- Consider the decision (both majority and dissenting opinions) and legal reasoning in the case.
- Assess the implications and the significance of the case in constitutional history.

A moot court simulation is a very exciting instructional strategy that involves students in a role play of the United States Supreme Court. Similar to the case study method, a moot court simulation calls for active involvement of students. Acting as judges and attorneys, students learn how the Supreme Court operates and develop a better understanding of the case in question and the issues involved.

To create a successful simulation, students are encouraged to engage in the following procedures. First, as a whole class, review the background information and the facts in the case. Second, as a whole class, determine the main issue in the case. Third, divide students into three groups:

(1) Judges, who review the facts in the case, clarify the issue, and prepare questions that will be asked of the attorneys during the simulation.
(2) Petitioners, who prepare two or three written and oral arguments for the simulation.
(3) Respondents, who prepare two or three written and oral arguments for the simulation.

Two court simulation options are presented below.

(1) Involve the class as one court room with nine justices, two attorneys for the petitioner and respondent. The remainder of the class serves as an audience.
(2) Divide the class into three to five small groups; each group includes three judges, one or two attorneys for both the petitioner and the respondent. The small courts will operate individually. This option is advantageous because of the possibility of conflicting decisions by the courts. If the classrooms courts differ in their judgments, students will begin to understand the importance of dissenting opinions and the make-up of the court.

Debrief the court simulation by reading the real decision and engaging in an evaluation of the decisions made in the classroom. Discuss the implications and the significance of the case in constitutional history.

Sources of Information and Material about How to Teach the Law Using Supreme Court Cases. Information and materials on Supreme Court cases can be obtained from the organizations listed below:

- American Bar Association; Special Committee on Youth Education for Citizenship; 541 N. Fairbanks Avenue; Chicago, IL 60611-3314; (312) 988-5735.
- Center for Civic Education (CCE); 5146 Douglas Fir Road; Calabasas, CA 91302; (818) 340-9320.
- Center for Research and Development in Law-Related Education (CRADLE); Wake Forest University, School of Law; Box 7206, Reynolda Station; Winston-Salem, NC 27109; (918) 761-5872.
- Constitutional Rights Foundation (CRF); 601 S. Kingsley Drive; Los Angeles, CA 90005; (213) 487-5590.
- Chicago Office of the CRF; Suite 1700, 407 South Dearborn; Chicago, IL 60605; (312) 663-9057.
- National Institute for Citizenship Education in the Law (NICEL); 711 G Street, SE; Washington, DC 20003; (202) 546-6644.
- Phi Alpha Delta Public Service Center (PAD); 7315 Wisconsin Avenue; Suite 325E; Bethesda, MD 20814; (301) 986-9406.

References and ERIC Resources

The following list of resources includes references used to prepare this Digest. The items followed by an ED Number are in the ERIC system. They are available in microfiche and paper copies from the ERIC Document Reproduction Service (EDRS). For information about prices, contact EDRS, 7420 Fullerton Road, Suite 110, Springfield, Virginia 22153-2852; telephone numbers are 703-440-1400 and 800-443-3742. Entries followed by an EJ number are annotated monthly in CURRENT INDEX TO JOURNALS IN EDUCATION (CIJE), which is available in most large public or university libraries. EJ documents are not available through EDRS. However, they can be located in the journal section of most libraries by using the bibliographic information provided below.

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This publication was prepared with funding from the Office of Educational Research and Improvement, U.S. Department of Education, under contract no. RI88062009. The opinions expressed do not necessarily reflect the positions or policies of OERI and ED.